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Right of freedom of conscience ‘is not absolute’

Dr Joan McCarthy, School of Nursing and Midwifery, University College Cork, gives her view on the issue of conscientious objection as new abortion services come into force in Ireland

In the course of my work as a lecturer in healthcare ethics in the School of Nursing and Midwifery, University College Cork, I have met with a number of Irish health professionals – nurses, midwives and doctors – who are uncertain and confused about their obligations in relation to the provision of abortions services in post-2018 Ireland. Their questions have prompted me to explain and defend the standard account of conscientious objection that is articulated in the Health (Regulation of Termination of Pregnancy) Act 2018. To do so, I will define and discuss some of the key terms that are at the centre of debates about conscientious objection: “conscience”, “freedom of conscience”, “right of freedom of conscience”, and “conscientious objection” itself.

Conscience and freedom of conscience

“Conscience” is characterised as an inward-looking faculty or

process by which we can discern moral principles or truths. It acts as a moral and emotional compass that guides our actions and maintains our sense of moral integrity. “Freedom of conscience” refers to the freedom to act or refrain from acting according to one’s conscience. Accounts of the sources of moral principles, as well as freedom of conscience, vary. For example, the Catholic Church holds that God is the source of moral standards of right and wrong, and genuine freedom is exercised when an individual accesses God’s laws through their faculty of conscience and lives according to them. Alternatively, a secular perspective might include family, education, or culture as sources of moral principles and views conscience as the combined force of reason, emotion and intention that motivates an individual to act. On this view, an individual exercises freedom when they commit themselves to the moral standards and the moral life that they hold to be authentic and good.

Right of freedom of conscience

Concern about interference by governments and organisations to curtail individual freedom of conscience, whatever meaning we attach to it, has brought about the recognition of a “right of freedom of conscience”. This allows for the possibility of a plurality of moral and religious views that ought to be respected and it is protected by the United Nations (UN) Universal Declaration of Human Rights, which reads: “Everyone has the right to freedom of thought, conscience and religion” (art. 18). However, the UN also places a limit on the scope of this freedom:

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” (art. 29)

In short, some limits are placed on the exercise of individual conscience when its exercise impacts on the rights and freedoms of other people. The challenge then is to determine the precise scope of the right of freedom of conscience. This is especially pertinent in the case of individuals whose professional role and responsibilities directly impact on the lives and wellbeing of others.

The state, for example, may afford a vegetarian complete freedom to decide about his own personal diet and refusal to eat meat. However, the question arises: if he works as a cook in a public hospital, should he be required to prepare and cook meat for the patients who are being treated there? Similarly, the right of an adult Jehovah’s Witness to refuse a blood transfusion on the basis of her religious beliefs is protected in ethics and law. However, the question arises: if she were a surgeon working in a critical care unit should she be expected to provide a blood transfusion to a patient who needs and wants it? Finally, in Ireland, post-2018, a woman will have the legal right to seek the termination of a pregnancy up to 12 weeks gestation on request and on limited grounds thereafter. However, if a nurse, who happens to be Catholic and whose conscience would abhor a termination for herself, is working in a public hospital that provides for termination of pregnancy, the question arises: to what extent should she be obliged to carry out, or be involved in carrying out, a termination for another woman who needs and wants it?

In order to answer these questions, we need to consider the meaning and scope of “conscientious objection”.

Conscientious Objection (CO)

In his book, *Conscientious Objection in Healthcare* (Cambridge University Press, 2011), MR Wicclair explains that individuals engage in acts of conscientious objection when they: “(1) refuse to provide legal and professionally accepted goods or services that fall within the scope of their professional competence, and; (2) justify their refusal by claiming that it is an act of conscience or is conscience-based” (2011: 1). Might the vegetarian cook, the Jehovah’s Witness clinician and the Catholic nurse refuse to provide legitimate professional services by appealing to this account of conscientious objection? To answer this question, the state has to consider the impact of such refusals on the rights and wellbeing of others – the patient who wants or needs to eat meat or the patient who wants or needs a blood transfusion or a termination. A balance needs to be struck between these competing rights and interests. In other words, the state needs to determine the

precise scope and application of conscientious objection. In striking this balance, the state cannot allow anyone and everyone to refuse to carry out their professional obligations by appealing to their personal moral views. To do so would hold everyone ransom to the dictates of everyone else’s conscience – a deeply relativist and possibly dangerous position that could cripple every service that the state or anyone else provided. Indeed, the conscience of the vegetarian cook and the Jehovah’s Witness surgeon are usually not afforded the protection of conscientious objection in relation to their professional obligations. In practice, I imagine that in order to stay as true to the dictates of their conscience as possible, vegetarian cooks try to gain employment in vegetarian, rather than mainstream, restaurants, and, I hear from colleagues in the Jehovah’s Witness community that health professionals, who happen to be Jehovah’s Witnesses, tend to avoid working in critical care.

The conscience of the nurse (or midwife or doctor), who happens to be Catholic, in post-2018 Ireland, however, is viewed differently because of the particular religious, cultural, and historical context out of which perspectives on the morality of abortion have emerged in this country. In her case, the state sets out the grounds on which she can conscientiously object in Section 22 of the Health (Regulation of Termination of Pregnancy) Act (2018). Under Section 22, the nurse is not obliged to “carry out, or to participate in carrying out, a termination of pregnancy” (except in cases of emergency). In normal circumstances then, the nurse who views abortion as a moral wrong can work in accordance with the dictates of her conscience. However, Section 22 also limits the scope of her conscientious objection to direct involvement in providing terminations. This means that the nurse is required to transfer the care of a pregnant woman to others who are willing to provide such services and it implies that she would also be expected to carry out other duties such as supervision and rostering. In placing this limit on the scope of the activities of health professionals that are covered by conscientious objection, the state ensures that the health, wellbeing and consciences of women who want and need these healthcare services are also respected and protected.

To conclude, the right of freedom of conscience is an important, but not an absolute, right. It is a means of respecting the beliefs and values of individuals where possible and it is defended in most democratic and pluralist countries. However, the scope of the right of freedom of conscience is also limited – especially where its exercise in professional contexts puts the rights and freedoms of others at risk. Doctors, nurses and midwives who are currently demanding that the Irish government extend the right of conscientious objection beyond the bounds of Section 22 are, in effect, claiming that their beliefs and values should trump the healthcare needs as well as the beliefs and values of patients in their care. However well-intentioned they may be, they are taking an absolutist stance that undermines the very freedom of conscience that they purport to defend.

Finally, I want to acknowledge that many health professionals may not have envisaged that the provision of abortion services might be part of Irish healthcare in their working lives and that they are genuinely perturbed by what this may mean for them. I hope that what they may view as an insurmountable challenge today will, in time, be seen as an important part of creating a healthcare system that is safer, more egalitarian, inclusive and genuinely committed to respecting the values and beliefs of all.